Tan Sri Abdul Aziz bin Zainal (applying for himself and on behalf of Jawatankuasa Sementara Permohonan Memansuhkan Akta Bank Rakyat) & Ors v Lembaga Pengarah Bank Kerjasama Rakyat Malaysia Bhd & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-127–03 OF 2021
HAS ZANAH MEHAT, CHE MOHD RUZIMA AND SEE MEE CHUN JJCA
21 JULY 2023

Civil Procedure — Judicial review — Application for leave — Appellants applied for leave to file judicial review to challenge against decision of Minister in dismissing application to terminate operation of Bank Kerjasama Rakyat Malaysia Bhd (Special Provisions) Act 1978 ('Act 202') — Appeal against High Court's decision in dismissing application — Whether application was within time — Whether there were any good reasons to warrant extension of time — Whether second respondent's decision in dismissing the appellants' application to cease operation of Act 202 was amenable to judicial review

This was an appeal against the decision of the High Court in dismissing the appellants' ('applicants') application for leave to commence judicial review proceedings to quash the purported administrative decision made by the Menteri Pembangunan Usahawan dan Koperasi ('the second respondent') and Lembaga Pengarah Bank Kerjasama Rakyat Malaysia Bhd ('the first respondent') in relation to the enforcement of Bank Kerjasama Rakyat Malaysia Bhd (Special Provisions) Act 1978 ('Act 202'). The third and fourth respondents were Menteri Kewangan Malaysia and Kerajaan Malaysia, respectively. The applicants wrote to the second respondent requesting that the second respondent exercise his powers and discretions under s 31 of Act 202 to terminate the operation of Act 202. On 16 April 2019, the applicants received the letter from the second respondent informing his decision rejecting the applicants' application. The applicants again wrote to the second respondent requesting him to review his decision dismissing their application. On 27 August 2019 the applicant received a letter from the second respondent dismissing the applicants' request. Further, the applicants sent a letter to the first respondent requesting a special general meeting to pass a resolution to cease the Act 202. Subsequently the first respondent informed the applicant that the application was dismissed and that the power to cease Act 202 was the discretion of the second respondent. The reliefs sought by the applicants in the judicial review if they were granted leave were: (a) a declaration that Act 202

was a piece of legislation that was meant to be in force only temporarily, and thus s 31 of Act 202 empowered the Minister to declare by order published in the *Gazette* that Act 202 shall cease to remain in force, which against the backdrop of the facts pleaded by the second, third and fourth respondents were duty bound to exercise the same forthwith; (b) a certiorari order to vest to this court, and to quash the decisions made by the second respondent in refusing the applicants' representation and appeal for the operation of Act 202 to be terminated as provided for under s 31(2) of Act 202; (c) a certiorari order to vest to this court, and to quash the decision made by the first respondent in refusing the applicants' request that an extraordinary general meeting be held for the necessary motion to be tabled to call for the termination of Act 202 under s 31 of Act 202; (d) a mandamus order to compel the second respondent to exercise the powers and discretion under s 31 of Act 202 to terminate the operation of Act 202; and (e) as a matter of precaution, but only if ruled necessary, that the applicants be given leave to initiate the judicial review application, out of time. In response to the applicants' ex parte application for leave to file a judicial review, the AG's Chambers raised two preliminary objections: (i) whether the application was within time and if the answer was in the negative, whether there were good reasons to warrant an extension of time; and (ii) whether the second respondent's decision in dismissing the applicants' application to cease the operation of Act 202 was amenable to judicial review. The learned High Court judge ('LHCJ') in dismissing the application held that: (1) as the applicant's application was filed on 26 June 2020, there was a delay of almost 11 months and there was nothing advanced by the applicants to show that they had a good reason, or any reason at all for that matter, for failing to file the application promptly; and (2) the decision of the Minister on whether to cease the operation of Act 202 was not a decision that should be reviewed by the court on the merits of the application since the court was not equipped with the necessary tools to examine the policy decision made by the Minister and therefore, the decision of the second respondent was non-justiciable and not amenable to judicial review. Hence, this appeal.

Held, dismissing the appeal with costs:

(1) The time to file the judicial review application against the second respondent's decision started to run from 16 April 2019 until 16 July 2019. From the plain reading of the second rejection letter, it was obvious that the second respondent did not make any new decision with regard to the applicants' application to terminate the operation of Act 202. The second respondent emphasised that there was no need to review the enforcement of Act 202 and had also stressed that his earlier decision was final. Therefore, the second rejection letter was not a new decision by the second respondent (see paras 15 & 17).

(2) The first respondent's decision not to call the general meeting as requested by the applicants was a separate and distinct decision from the

second respondent's decision via the rejection letter. Furthermore, the discretionary power to terminate the operation of the Act purely lied with the second respondent with the concurrence of the Minister of Finance, and not with the first respondent as clearly provided under s 31(1) of Act 202. Thus, the applicants' effort to tie up the first respondent's decision in rejecting the calling of general meeting with the second respondent's decision in rejecting the application to terminate the operation of Act 202 as a series of decision could not stand (see para 20).

(3) The LHCJ did not err in his finding that there was no sufficient or good reason given by the applicants for the court to exercise its discretion to extend the time limit. There was no explanation at all for the delay. The manner to cease operation of Act 202 as prescribed under s 31(1) of Act 202, the discretion was given to the second respondent. Thus, any challenge should be against the second respondent's decision and not anyone else. Once the LHCJ rejected the explanation for the delay, the High Court ceased jurisdiction to hear the application for an order of certiorari. The LHCJ was correct in denying leave to the applicants in such a situation (see paras 21–24).

(4) Only the second respondent with the concurrence of the Minister of Finance could determine the appropriate time to terminate the enforcement of Act 202. The second respondent had purely made a policy decision in exercising his discretionary power. As a Minister that oversaw the implementation and the enforcement of Act 202, the second respondent had clearly indicated that it was not suitable to terminate the operation of Act 202 under the current situation. Therefore, the decision of the second respondent was non-justiciable and not amenable to judicial review (see paras 29–31).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang menolak permohonan perayu ('pemohon') untuk kebenaran memulakan prosiding semakan kehakiman untuk membatalkan keputusan pentadbiran yang dikatakan dibuat oleh Menteri Pembangunan Usahawan dan Koperasi ('responden kedua') dan Lembaga Pengarah Bank Kerjasama Rakyat Malaysia Bhd ('responden pertama') berhubung dengan penguatkuasaan Akta Bank Kerjasama Rakyat Malaysia Bhd (Peruntukan Khas) 1978 ('Akta 202'). Responden ketiga dan keempat ialah masing-masing Menteri Kewangan Malaysia dan Kerajaan Malaysia. Pemohon menulis surat kepada responden kedua meminta responden kedua menggunakan kuasa dan budi bicaranya di bawah s 31 Akta 202 untuk menamatkan operasi Akta 202. Pada 16 April 2019, pemohon menerima surat daripada responden kedua yang memaklumkan keputusannya menolak permohonan pemohon. Pemohon sekali lagi menulis kepada responden kedua meminta beliau menyemak keputusannya menolak permohonan mereka. Pada 27 Ogos 2019 pemohon

menerima surat daripada responden kedua yang menolak permintaan pemohon. Selanjutnya, pemohon menghantar surat kepada responden pertama meminta mesyuarat agung khas untuk meluluskan resolusi menamatkan Akta 202. Seterusnya responden pertama memaklumkan kepada pemohon bahawa permohonan itu telah ditolak dan kuasa untuk menamatkan Akta 202 adalah mengikut budi bicara responden kedua. Relif yang dipohon oleh pemohon dalam semakan kehakiman jika mereka diberikan kebenaran ialah: (a) pengisytiharan bahawa Akta 202 adalah satu perundangan yang bertujuan untuk berkuat kuasa sementara sahaja, dan dengan itu s 31 Akta 202 memberi kuasa kepada Menteri untuk mengisytiharkan melalui perintah yang disiarkan dalam Warta bahawa Akta 202 hendaklah tamat berkuat kuasa, yang berlatarbelakangkan fakta yang didakwa oleh responden kedua, ketiga dan keempat mempunyai kewajipan untuk melaksanakan perkara yang sama dengan serta-merta; (b) perintah certiorari untuk meletak hak kepada mahkamah ini, dan untuk membatalkan keputusan yang dibuat oleh responden kedua dalam menolak representasi dan rayuan pemohon supaya Akta 202 ditamatkan seperti yang diperuntukkan di bawah s 31(2) Akta 202; (c) perintah certiorari untuk diletak hak kepada mahkamah ini, dan untuk membatalkan keputusan yang dibuat oleh responden pertama dalam menolak permintaan pemohon supaya mesyuarat agung luar biasa diadakan untuk usul yang perlu dibentangkan untuk memanggil penamatan Akta 202 di bawah s 31 Akta 202; (d) perintah mandamus untuk memaksa responden kedua menjalankan kuasa dan budi bicara di bawah s 31 Akta 202 untuk menamatkan operasi Akta 202; dan (e) sebagai langkah berjaga-jaga, tetapi hanya jika diputuskan perlu, supaya pemohon diberi kebenaran untuk memulakan permohonan semakan kehakiman, di luar masa. Sebagai balasan kepada permohonan ex parte pemohon untuk kebenaran memfailkan semakan kehakiman, Jabatan Peguam Negara membangkitkan dua bantahan awal: (i) sama ada permohonan itu dalam masa dan jika jawapannya adalah negatif, sama ada terdapat alasan yang kukuh untuk menjamin lanjutan masa; dan (ii) sama ada keputusan responden kedua menolak permohonan pemohon untuk menamatkan operasi Akta 202 boleh dicabar oleh semakan kehakiman. Hakim Mahkamah Tinggi ('HMT') yang yang bijaksanan dalam menolak permohonan itu berpendapat bahawa: (1) memandangkan permohonan pemohon difailkan pada 26 Jun 2020, terdapat kelewatan hampir 11 bulan dan tiada apa-apa yang didahulukan oleh pemohon untuk menunjukkan bahawa mereka mempunyai sebab yang kukuh, atau apa-apa sebab sama sekali untuk perkara itu, kerana gagal memfailkan permohonan dengan segera; dan (2) keputusan Menteri sama ada untuk menamatkan operasi Akta 202 bukanlah satu keputusan yang patut dikaji semula oleh mahkamah atas merit permohonan kerana mahkamah tidak dilengkapi dengan alat yang diperlukan untuk meneliti keputusan dasar yang dibuat oleh Menteri dan oleh itu, keputusan responden kedua adalah tidak boleh diadili dan tidak boleh dicabar oleh semakan kehakiman. Oleh itu, rayuan ini.

Diputuskan, menolak rayuan dengan kos:

(1) Masa untuk memfailkan permohonan semakan kehakiman terhadap keputusan responden kedua bermula dari 16 April 2019 sehingga 16 Julai 2019. Daripada bacaan biasa surat penolakan kedua, jelas responden kedua tidak membuat sebarang keputusan baharu berhubung permohonan pemohon untuk menamatkan operasi Akta 202. Responden kedua menegaskan tidak perlu menyemak semula penguatkuasaan Akta 202 dan juga menegaskan bahawa keputusannya sebelum ini adalah muktamad. Oleh itu, surat penolakan kedua bukanlah keputusan baharu oleh responden kedua (lihat perenggan 15 & 17).

(2) Keputusan responden pertama untuk tidak memanggil mesyuarat agung seperti yang dipohon oleh pemohon adalah keputusan yang berasingan dan berbeza daripada keputusan responden kedua melalui surat penolakan. Tambahan pula, kuasa budi bicara untuk menamatkan operasi Akta semata-mata terletak pada responden kedua dengan persetujuan Menteri Kewangan, dan bukannya dengan responden pertama seperti yang diperuntukkan dengan jelas di bawah s 31(1) Akta 202. Oleh itu, usaha pemohon untuk mengikat keputusan responden pertama menolak panggilan mesyuarat agung dengan keputusan responden kedua menolak permohonan untuk menamatkan operasi Akta 202 sebagai satu siri keputusan tidak dapat bertahan (lihat perenggan 20).

(3) HMT tidak terkhilaf dalam mendapati bahawa tidak ada alasan yang mencukupi atau munasabah yang diberikan oleh pemohon untuk mahkamah menggunakan budi bicaranya untuk melanjutkan had masa. Tiada penjelasan langsung mengenai kelewatan itu. Cara untuk menamatkan operasi Akta 202 seperti yang ditetapkan di bawah s 31(1) Akta 202, budi bicara diberikan kepada responden kedua. Oleh itu, sebarang cabaran harus melalui keputusan responden kedua dan bukan orang lain. Sebaik sahaja HMT menolak penjelasan mengenai kelewatan itu, Mahkamah Tinggi ditamatkan bidang kuasa untuk mendengar permohonan untuk mendapatkan perintah certiorari. HMT adalah betul dalam menafikan kebenaran kepada pemohon dalam keadaan sedemikian (lihat perenggan 21–24).

(4) Hanya responden kedua dengan persetujuan Menteri Kewangan boleh menentukan masa yang sesuai untuk menamatkan penguatkuasaan Akta 202. Responden kedua telah membuat keputusan dasar dalam melaksanakan kuasa budi bicaranya. Sebagai Menteri yang menyelia pelaksanaan dan penguatkuasaan Akta 202, responden kedua dengan jelas menyatakan bahawa tidak sesuai untuk menamatkan operasi Akta 202 dalam keadaan semasa. Oleh itu, keputusan responden kedua adalah

A tidak boleh diadili dan tidak boleh dicabar oleh semakan kehakiman (lihat perenggan 29–31).]

Cases referred to

Ah San @ Goh Ah Soon v Majlis Bandaraya Ipoh [2000] 1 MLJ 615, FC (refd)
B *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145, FC (refd)
Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345, FC (refd)
Duport Steels Ltd & Ors v Sirs & Ors [1986] 1 WLR 142, HL (refd)
Fothergill v Monarch Airlines Ltd [1980] 3 WLR 209, HL (refd)
C *Ketua Pengarah Hasil Dalam Negeri v Mudah.my Sdn Bhd* [2017] 2 MLJ 197, CA (refd)
Ketua Pengarah Kastam dan Eksais v Coach Malaysia Sdn Bhd [2019] 2 MLJ 716, CA (refd)
Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187, FC (refd)
D *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd* [2010] 4 MLJ 360, CA (refd)
Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower & Anor [1983] 2 MLJ 54, FC (refd)
Mohd Ismail bin Abd Ghani (would like to be known in the identity card as
E *Saravanan a/l Balakrishnan) v Ketua Pengarah Pendaftaran Negara & Anor* [2012] 1 MLJ 707, HC (refd)
Paul Raj Chelladurai v Jabatan Telekom Malaysia Bhd & Ors [1997] 2 MLJ 764, FC (refd)
Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan
F *dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443; [2019] 4 CLJ 561, FC (refd)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)
Ravindran v Malaysian Examinations Council [1984] 1 MLJ 168, FC (refd)
G *Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161, FC (refd)
Yahya bin Kassim v Government of Malaysia & Anor [1997] 3 MLJ 749, CA (refd)

H

Legislation referred to

Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 ss 3(1), 28(1), 31, 31(1), (2)
Rules of Court 2012 O 53, rr 3(6), (7)

I

Appeal from: *Tan Sri Abdul Aziz bin Zainal (memohon untuk diri sendiri dan bagi pihak Jawatankuasa Sementara Permohonan Memansuhkan Akta Bank Rakyat) & Ors v Lembaga Pengarah Bank Kerjasama Rakyat Malaysia Bhd & Ors* [2021] MLJU 2471 (High Court, Kuala Lumpur)

Wee Yeong Kang (Shafee & Co) for the appellant.
Ng Wee Li (Federal Counsel, Attorney General's Chambers) for the respondent.

Che Mohd Ruzima JCA:

INTRODUCTION

[1] This is an appeal against the decision of Kuala Lumpur High Court dated 10 February 2021 in dismissing the appellants'/applicants' application for leave to commence judicial review proceedings to quash the purported administrative decision made by the Menteri Pembangunan Usahawan dan Koperasi ('second respondent') and Lembaga Pengarah Bank Kerjasama Rakyat Malaysia Bhd ('first respondent') in relation to the enforcement of Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 ('Act 202'). Two others named in the judicial review were Menteri Kewangan Malaysia ('third respondent') and Kerajaan Malaysia ('fourth respondent'). The reliefs sought by Tan Sri Abdul Aziz bin Zainal, Datuk Mustafha bin Abdul Razak and Datuk Rahim bin Yunus ('appellants/ applicants') in the judicial review if the appellants/applicants were granted leave are as follows:

(a) a declaration that the Bank Kerjasama Rakyat Malaysia Bhd (Special Provisions) 1978 (Act 202) is a piece of legislation that was meant to be in force only temporarily, and thus s 31 of Act 202 empowers the Minister to declare by order published in the *Gazette* that Act 202 shall cease to remain in force, which against the backdrop of the facts pleaded by the second, third and fourth respondents are duty bound to exercise the same forthwith;

(b) a certiorari order to vest to this court, and to quash the decisions made by the second respondent on 12 April 2019 and 23 August 2019 respectively in refusing the applicants' representation and appeal for the operation of Act 202 to be terminated as provided for under s 31(2) of Act 202;

(c) a certiorari order to vest to this court, and to quash the decision made by the first respondent on 4 May 2020 in refusing the applicants' request that an Extraordinary General Meeting be held for the necessary motion to be tabled to call for the termination of Act 202 under s 31 of Act 202;

(d) a mandamus order to compel the second respondent to exercise the powers and discretion under s 31 of Act 202 to terminate the operation of Act 202, via the following actions:

(i) that the second respondent and with the concurrence of the third respondent, direct the Board of Bank Kerjasama Rakyat Malaysia Bhd ('Bank Rakyat') to call a general meeting of the members of the bank for the purpose of constituting a Board of Directors, as

provided for under s 31(1) of Act 202;

(ii) that after a Board of Directors has been constituted under the by-laws of Bank Rakyat, the second respondent shall by order publish in the *Gazette* and declare that Act 202 shall cease to remain in force; and

(iii) that the Board of Bank Rakyat shall be divested of the management and administration of the bank, and such management and administration shall vest in the Board of Directors constituted under the by-laws of Bank Rakyat; and

(iv) any other transitional steps that may be deemed necessary; and

(e) as a matter of precaution, but only if ruled necessary, that the applicants be given leave to initiate the judicial review application referred to in para 9(b) above, out of time.

[2] For ease of reference, parties will be referred to as they were in the High Court, that is, the applicants and the respondents. The second applicant has since withdrawn his appeal via notice of discontinuance dated 26 April 2022 in encl 29.

THE BACKGROUND FACTS

[3] The factual background that prompted the applicant to filed an application for leave for judicial review as narrated by the learned High Court judge ('LHCJ') in his grounds of judgment ('GOJ') are as follows:

(a) the inception of Bank Rakyat ran back from 28 September 1954, with the establishment of Bank Agong Kampong Bekerjasama-sama Persekutuan Tanah Melayu Dengan Tanggongan Bhd. Initially comprised of 11 bank societies as its members, the bank had the specific aim and objective to provide assistance and raise the standards of living of its members and other cooperative societies, through financial, business and agricultural activities;

(b) the bank went through various restructuring process and changes of names, from Bank Agong Kerjasama Malaysia Bhd ('Bank Agong') in 1964, to Bank Kerjasama Malaysia Bhd ('Bank Kerjasama') in 1966, and opened its door of membership to individual entities apart from cooperative societies;

(c) in 1973, the bank amended its by-laws so as to allow the bank to establish subsidiary companies, apart from changing its name to Bank Kerjasama Rakyat Malaysia Bhd ('Bank Rakyat');

(d) that beginning the late 1970s, however, the bank was faced with severe and serious financial crises, and sought the Malaysian Government's assistance for loan, in order to avoid turning insolvent;

(e) this prompted the then Prime Minister Datuk Hussein bin Onn to submit a proposal in the Dewan Rakyat, in the form of a bill of parliament known as the Bank Kerjasama Rakyat Malaysia Bhd (Special Provisions) Bill, for the Malaysian Government to provide financial assistance to Bank Rakyat, while also at the same time to take over the management of the bank under the supervision of the Minister in charge of cooperative societies;

(f) that the bill was accordingly passed by both houses of Parliament and assented to by the Agong and effectively became an Act of Parliament on 16 February 1978, and the management of the bank came under the supervision of the Minister in charge of cooperative societies;

(g) that the supervision and taking over of the bank's management by the Malaysian Government was however never meant to be permanent. In tabling the bill for the Act in 1977, the then Prime Minister made it expressly clear that it was only a temporary measure, to save the bank from mismanagement and insolvency, and once that had been rectified, the administration and management of the bank will accordingly be handed back to the bank to manage its own affairs;

(h) the applicants herein had formed a Protem Committee and submitted to the second respondent a proposal for the restructuring of Bank Kerjasama Rakyat Malaysia Bhd on 5 July 2018, and nation-wide discussions and meetings between members of Bank Rakyat in general, as well as the Protem Committee, were held numerous times between January 2019 to March 2020;

(i) on 18 March 2019, the applicants through their solicitors wrote to the second respondent requesting that the second respondent exercise his powers and discretions under s 31 of Act 202 to terminate the operation of Act 202;

(j) on 16 April 2019, the applicants received the letter dated 12 April 2019 from the second respondent informing his decision rejecting the applicants' application;

(k) on 5 August 2019, again the applicants' solicitor wrote to the second respondent requesting him to review his decision dismissing their application;

(l) later, on 27 August 2019 the applicant received a letter dated 23 August 2019 from the second respondent dismissing the applicants' request; and

A (m) further, on 17 March 2020 the applicants sent a letter to the first respondent requesting a special general meeting to pass a resolution to cease the Act 202. Subsequently on 4 May 2020, the first respondent informed the applicant via a letter dismissing the application. The first respondent also stated that the power to cease Act 202 is the discretion
B of the second respondent.

[4] Based on the above background, the applicants filed an ex parte application for leave to file a judicial review before the High Court with the main intention is to challenge the enforcement of the Act 202.
C

AG'S PRELIMINARY OBJECTIONS

[5] In response to the applicants' ex parte application for leave to file a
D judicial review, the AG's Chambers raised two preliminary objections as follows:

(a) whether the application is within time and if the answer is negative, whether there are any good reasons to warrant an extension of time; and

E (b) whether the second respondent's decision in dismissing the applicants' application to cease the operation of the Act 202 is amenable to judicial review.

THE HIGH COURT DECISION

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[6] The LHCJ agrees with the AG's objection on the time frame for the applicants to file the judicial review. The second respondent's decision was made through a letter dated 12 April 2019. The decision was communicated to the applicants as admitted by them on 16 April 2019. The applicants'
G application for judicial review must be made within three months after 16 April 2019. The last date to file would be on 16 July 2019. As the applicant's application was filed on 26 June 2020, there is a delay of almost 11 months. The LHCJ also of the opinion that there is nothing advanced by the applicants to show that they had a good reason, or any reason at all for that matter, for
H failing to file the application promptly. Thus, this application should be dismissed in limine. Furthermore, the decision of the Minister on whether to cease the operation of the Act 202 is not a decision that should be reviewed by the court on the merits of the application since the court is not equipped with
I the necessary tools to examine the policy decision made by the Minister. Therefore, the decision of the second respondent is non-justiciable and not amenable to judicial review.

THE APPEAL

[7] The applicants had listed 22 grounds of appeal in their memorandum of appeal. However, learned counsel for the applicants' focused his submission mainly on two main issues that were raised by the AG's Chambers in their preliminary objection, which were later accepted by the LHCJ in his decision.

[8] On the issue of time frame, learned counsel for the applicant argued that there were three decisions made by the respondents. Firstly, on 16 April 2019, when the second respondent replied that the time was not suitable for Bank Rakyat's management to be divested from the control of the second respondent. Secondly, on 23 August 2019, when the second respondent replied to the applicants' letter dated 5 August 2019 by reiterating the first decision and then went on to say that there is no need to review the Act 202 since there is no resolution passed by the members of Bank Rakyat. Thirdly, on 4 May 2020 when the first respondent responded to the applicants' letter dated 17 March 2020 seeking that an Extraordinary General Meeting ('EGM') to be held, the Board refused it citing the reason that the power to end the enforcement of the Act 202 is entirely on the second respondent. It was argued that the three decisions are inter-connected and should be viewed as a series of decisions. Therefore, the three months period for the applicants to file the judicial review application should be calculated beginning from the decision of the first respondent on 4 May 2020.

[9] As to the grounds to support the application for judicial review, learned counsel for the applicants contended that the second respondent decision was flawed, illegal, and irrational when it refused to consider exercising the exit-clause under Act 202 on the reason that there has not been any request from members of the bank, whereas s 31 of Act 202 makes no mention of any requirement of a request from members of the bank. As for the first respondent, the decision to refuse an EGM is tainted with illegality and exceeds its own jurisdiction since the said refusal is in contravention of s 28(1) of the by-laws of Bank Rakyat which provides that the first respondent has no right to refuse the calling of the EGM.

[10] On the issue of whether the second respondent's decision in dismissing the appellants' application to cease the operation of the Act 202 is amenable to judicial review, learned counsel for the applicants submitted that both the first and second respondents had given their reasons to refuse the applicants' applications. He argued that, it is a trite principle of law that the administrator is not required to give reasons for his decisions when exercising his discretion, but when reasons are provided, those reasons can be scrutinised by the court, so

as to ensure that those reasons are sufficient, and not tainted with illegality or irrationality. Therefore, the reasoned decision by first and second respondents are amenable to judicial review.

OUR DECISION

[11] First and foremost, the law on the time frame to launch an application for judicial review is clear. Order 53 r 3(6) and (7) of the Rules of Court 2012 ('the ROC') provide that:

> Leave (O 53 r 3)
>
> (6) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.
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> (7) The Court may, upon an application, extend the time specified in rule 3(6) if it considers that there is a good reason for doing so.

[12] Generally, failure to comply with the prescribed time limit provided under O 53 r 3(6) of the ROC is fatal. See the Federal Court decisions in *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower & Anor* [1983] 2 MLJ 54 at p 55 and *Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161 at p 171. See also this court decisions in *Yahya bin Kassim v Government of Malaysia & Anor* [1997] 3 MLJ 749 at pp 751–752; *Paul Raj Chelladurai v Jabatan Telekom Malaysia Bhd & Ors* [1997] 2 MLJ 764 at p 773; *Ah San @ Goh Ah Soon v Majlis Bandaraya Ipoh* [2000] 1 MLJ 615 at p 617 and *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd* [2010] 4 MLJ 360 at pp 382–383. High Court in *Mohd Ismail bin Abd Ghani (would like to be known in the identity card as Saravanan a/l Balakrishnan) v Ketua Pengarah Pendaftaran Negara & Anor* [2012] 1 MLJ 707 at pp 714–715 Aziah Ali J (as she then was) held that:

> [9] Certain breaches of the rules are serious in that it may go to the very root or foundation of the legal process. If that happens, the court is reluctant to exercise its discretion in favour of validating that breach (per Abdul Malik Ishak JCA in *Malayan Banking Bhd v Koay Kang Chuwan & Anor* [2010] 5 MLJ 46; [2010] 6 CLJ 172). In respect of an application for judicial review, compliance with the time frame is fundamental. It goes to the starting point, that of jurisdiction to hear the application (see *Yahya bin Kassim v Government of Malaysia & Anor* [1997] 3 MLJ 749).
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> [10] Counsel for the applicant relies on O 1A of the RHC. It is worthwhile to refer to the judgment of Zaki Tun Azmi CJ in the case *of Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v Datuk Captain Hamzah bin Mohd Noor and another appeal* [2009] 1 MLJ 625; [2009] 4 CLJ 329 wherein His Lordship said as follows:

> The technical non-compliance of any rule may be remedied where there is an accidental omission or oversight by a party. A general provision such as O 1A of the RHC is for the court or judge to give heed to justice over technical non-compliance. It must not supersede a mandatory requirement of the Rules. Order 1A of the RHC cannot be invoked when a party intentionally disregards in complying with the Rules. Otherwise, parties would be encouraged to ignore the Rules.
>
> In the context of the Rules of the High Court 1980 the phrase '... technical non-compliance ...' is thus a reference to non-compliance with a rule which is not fundamental or mandatory in nature.

Therefore, I am of the view that O 1A cannot be relied on to supersede O 53 r 3(6) which is a rule mandatory in nature.

[13] Be that as it may, O 53 r 3(7) of the ROC allowed the exercise of discretion to extend the time limit imposed by O 53 r 3(6) of the ROC. There are a considerable number of decisions that allowed the extension of time to file a judicial review application. The courts have accepted that their power to extend time should be exercised judiciously, that they should articulate the criteria they are applying and should provide reasons for their ruling. The court would not grant the application for extension unless positively satisfied that it was proper to do so. The prima facie rule is that, as the pre-condition to the exercise of discretion, the applicant must show good reasons for the delay. The judicial rulings indicate that what explanations for delay will be acceptable may vary according to the circumstances of each case. See this court decision in *Ketua Pengarah Hasil Dalam Negeri v Mudah.my Sdn Bhd* [2017] 2 MLJ 197 *Ketua Pengarah Kastam dan Eksais v Coach Malaysia Sdn Bhd* [2019] 2 MLJ 716 and *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd*.

[14] In dealing with the application for extension of time, we are mindful that the stringent conditions imposed by O 53 of the ROC are intended to protect those entrusted with the enforcement of public duties against groundless harassment and to reduce delays in resolving applications in the interest of good administration. See the Federal Court decision in the case of *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145. At p 172, the Federal Court went on to say as follows:

> However, O 53 of the RHC sets out a specific procedure for an aggrieved party seeking relief, including a declaration, against a public authority on his infringed right protected to which he was entitled to protection under public law to follow. It is our view that when such an explicit procedure is created to cater for this purpose, then as a general rule all such application for such relief must commence according to what is set down in O 53 of the RHC otherwise it would be liable to be struck off for abusing the process of the court.

[15] Coming back to the present appeal, it is not disputed that the second respondent rejected the applicants' request to terminate the operation of Act 202. The said decision was clearly stated in the second respondent letter dated 12 April 2019 ('the rejection letter') which was sent to the applicants and received by the applicants on 16 April 2019. The rejection letter was in response to the applicants' letter dated 18 March 2019 titled 'PERMOHONAN PEMANSUHAN AKTA 202 AKTA Bank Kerjasama RAKYAT BERHAD (PERUNTUKAN KHAS 1978)'. Paragraph 2 of the rejection letter stated that:

> Seperti mana tuan sedia maklum, subseksyen 31(1) Akta 202 menyatakan apabila Menteri berpendapat bahawa tidak lagi perlu bagi akta ini terus berkuat kuasa. Peruntukan ini menjelaskan bahawa pertimbangan adalah pada Menteri untuk menentukan bila keadaan yang sesuai. Saya berpandangan dengan melihat kepada keadaan semasa, ini bukan masa yang sesuai untuk Bank Rakyat beroperasi dan ditadbir tanpa kawalan daripada Kementerian Pembangunan Usahawan bagi menjaga kepentingan Bank Rakyat secara keseluruhan.

Even though the second respondent had not explicitly said that the applicants' application was rejected, it cannot be denied that the gist of the second respondent's answer in the rejection letter was to reject the applicants' application based on the reason that 'ini bukan masa yang sesuai untuk Bank Rakyat beroperasi dan ditadbir tanpa kawalan daripada Kementerian Pembangunan Usahawan bagi menjaga kepentingan Bank Rakyat secara keseluruhan'. Based on the rejection letter, we are of the same view with the LHCJ that the time to file the judicial review application against the second respondent's decision started to run from 16 April 2019 which lasted until 16 July 2019.

[16] Instead of filing a judicial review challenging the second respondent's decision in rejecting their application, the applicants through their solicitor wrote another letter dated 5 August 2019 titled 'PERMOHONAN UNTUK MENYEMAK SEMULA PENOLAKAN PERMOHONAN PEMANSUHAN AKTA BANK KERJASAMA RAKYAT BERHAD (PERUNTUKAN KHAS 1978)' to the second respondent, requesting him to review his decision dismissing their application. Once again, through a letter dated 23 August 2019 which was duly accepted by the applicants on 27 August 2019, the second respondent dismissed the applicants' request (the second rejection letter). Paragraph 2 of the second rejection letter stated that:

> Saya ingin tegaskan bahawa tiada keperluan untuk kajian semula Akta Bank Kerjasama Rakyat Berhad (Peruntukan Khas 1978). Di samping itu, tiada apa-apa resolusi oleh ahli-ahli Bank Rakyat semasa Mesyuarat Agung Tahunan supaya perkara ini dikaji semula. Oleh itu, keputusan saya di surat bertarikh 12 April 2019 adalah muktamad.

[17] From the plain reading of the second rejection letter, it is obvious that the second respondent did not make any new decision with regard to the applicants' application to terminate the operation of Act 202. In the second rejection letter, the second respondent did emphasise that there is no need to review the enforcement of the Act 202. More so, the second respondent had stressed that his earlier decision was final. Therefore, we cannot agree with learned counsel for the applicants' contention that the second rejection letter is a new decision by the second respondent.

[18] As regards to the second sentence in the second paragraph of the second rejection letter, which refers to the resolution by the members of Bank Rakyat, we are not in agreement with learned counsel for the applicants' arguments that the said second respondent's response would amount to a condition to his earlier decision. Clearly, the second respondent is citing an example or a situation that can be considered as a step to ask for a review on the enforcement of the Act 202. There is nothing to stop the applicants from tabling the necessary motion in the Annual General Meeting ('AGM') of the members of Bank Kerjasama Rakyat Bhd to call for a resolution to terminate the Act 202 as provided under s 31 of Act 202. After obtaining the resolution, the applicants can proceed to make an application to the second respondent to terminate the enforcement of the Act 202. Of course, this has to be done separately and it cannot be tied up with the second respondent's earlier decision via the rejection letter.

[19] Likewise, we are also not with the applicants in their attempt to implicate the first respondent's action to justify the extension of time. According to the applicants, based on the so-called new decision by the second respondent in the second rejection letter, the applicant went on to go on a nation-wide discussions and meetings among the members of Bank Kerjasama Rakyat Bhd in general, as well as setting up a Protem Committee, and various road-shows, with the prime goal to have a general meeting so as to allow a motion to be tabled and resolved on the need for Act 202 to be terminated. However, the first respondent rejected the applicants' proposal on 4 May 2020. It was argued that the first respondent's rejection is a decision that amounts to an extension of time for the applicants to challenge the rejection letter.

[20] With due respect, we are of the view that the first respondent's decision not to call the general meeting as requested by the applicants is a separate and distinct decision from the second respondent's decision via the rejection letter. It cannot be considered or viewed as a series of decisions based on the simple reason that the second respondent had made a clear and equivocal decision to reject the applicants' application. Furthermore, the discretionary power to terminate the operation of the Act purely lies with the second respondent with the concurrence of the Minister of Finance, and not with the first respondent

as clearly provided under sub-s 31(1) of the Act 202. Thus, the applicants' effort to tie up the first respondent decision in rejecting the calling of general meeting with the second respondent decision in rejecting the application to terminate the operation of the Act 202 as a series of decision could not stand.

[21] Next, as a matter of precaution, the applicants did pray for an extension of time to file leave to initiate the judicial review in their application before the High Court. The LHCJ found that there was no sufficient or good reason given by the applicants for the court to exercise its discretion. The explanation for the delay was not accepted by the trial judge and he ruled that the delay had not been satisfactorily explained. The reasons given by the LHCJ in rejecting the applicants' extension of time are as follows:

> 23. Upon perusal of the cause papers, I find that there is only one ground stated in the applicants' statement and affidavit. They blamed the second respondent's letter dated 23 August 2019 of requesting them to obtain the resolution from the members of Bank Rakyat.
>
> 24. The applicants alleged after the said letter, they conducted 12 road shows throughout the country to obtain the mandate from the members of Bank Rakyat. After the said road show, they wrote to the first respondent on 17 March 2020 seeking for a special general meeting.
>
> 25. Therefore, it would be incumbent upon this court to examine and determine whether the reason given is a good reason to justify an extension of time.
>
> 26. Based on the reason given by the applicants, I find that there is no sufficient or good reason given for this court to exercise its discretion for an extension of time.
>
> 27. From the reason given by the applicants, they are saying the respondents caused the delay. To me, this is just an excuse. Upon perusal of the cause papers, I find that the applicants knew and were aware on the decision-making process to cease the Act 202.
>
> 28. This is evident when the applicants wrote to the second respondent on 18 March 2019. When their application was rejected on 12 April 2019, again they wrote to the second respondent to consider his earlier decision.
>
> 29. The manner to cease operation of the Act is prescribed under s 31 of Act 202. Since the legislation gives such discretion to the Minister, then any challenge should be against the said Minister's decision.
>
> 30. More importantly, the applicants were represented by a solicitor from the very beginning. I find that even the application dated 18 March 2019 (exh AAZ5) was written by their solicitor. Hence, there is no excuse.

[22] Looking at the given reasons and the three affidavits affirmed by the applicants in supporting their application before the High Court, we are of the view that the LHCJ did not err in his finding. Upon perusing the three affidavits filed by the applicants that can be sieve through the appeal records, we find that there is no explanation at all for the delay. The only ground that has been considered by the LHCJ in his decision is actually not a direct explanation

by the applicants on the delay. It is just an inference based on the action taken by the applicants upon receiving the second rejection letter from second respondent. In fact, not a single paragraph in those affidavits gave reason why they were late in filing the application.

[23] On the issue of the delay, we can appreciate the applicants' standpoint. For them, they are on time based on the date of the latest decision by the first respondent. However, as correctly decided by the LHCJ, the manner to cease operation of the Act 202 as prescribed under sub-s 31(1) of the Act 202, the discretion was given to the second respondent. Thus, any challenge should be against the second respondent's decision and not anyone else.

[24] The principle of law on the jurisdiction of the High Court in relation to the time frame once the explanation for the delay was rejected is clear. In *Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161 the Federal Court came to the following conclusion:

> [30] In conclusion, we are of the view that the time frame in applying for judicial review prescribed by the rules is fundamental. It goes to jurisdiction and once the trial judge had rejected the explanation for the delay for extension of time to apply for judicial review, it follows that the court no longer has the jurisdiction to hear the application for leave for judicial review. Whether the application has merits or not, is irrelevant.

Earlier, in *Ravindran v Malaysian Examinations Council* [1984] 1 MLJ 168, the Federal Court held as follows:

> In our view the whole issue is clearly one of jurisdiction. In the event only the first consideration of the judge is relevant. Since the judge rejected the explanation for the delay it follows that the court had no jurisdiction to hear the application for leave for an order of certiorari. Whether the application for an order of certiorari had merits or not was irrelevant. This principle is implicit in *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower* [1983] 2 MLJ 54. There had been no jurisdiction to hear the application for certiorari because O 53 r 1A of the Rules of the High Court 1980 expressly directs that leave shall not be granted 'unless the application is made within six weeks after the date of the proceeding.

Therefore, once the LHCJ rejected the explanation of the delay, which we are in agreement with the said rejection, the High Court ceased jurisdiction to hear the application for an order of certiorari. The LHCJ is correct in denying leave to the applicants in such a situation.

[25] Based on our finding on the issue of time frame alone, the applicants' application for leave to file judicial review should fall. Be that as it may, for completion, we will also deal with the second issue raised by the AG's

Chambers. The question is, whether the second respondent's decision in dismissing the applicants' application to terminate the operation of the Act 202 is amenable to judicial review.

[26] To begin with, we like to refer to the source of power under the law that deals with the termination of the operation of the Act 202. For ease of reference, we produce the entire provision of s 31 of the Act 202 as follows:

> Power to terminate operation of Act
>
> 31.(1) If at any time it appears to the Minister that it is no longer necessary that this Act should remain in force, the Minister may, with the concurrence of the Minister of Finance, direct the Board to call a general meeting of the members of the bank for the purpose of constituting a Board of Directors under the by-laws of the bank.
>
> (2) As soon as possible after a Board of Directors has been constituted under the by-laws of the bank pursuant to subsection (1), the Minister may by order published in the *Gazette* declare that this Act shall cease to remain in force, and such an order may contain such consequential or transitional provisions as the Minister may deem necessary or expedient.
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> (3) Subject to subsection (4), on the date when the order under subsection
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> (2) takes effect, the Board shall be divested of the management and administration of the bank, and such management and administration shall vest in the Board of Directors constituted under the by-laws of the bank pursuant to subsection (1).
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> (4) Notwithstanding subsection (3), until such time as the Board of Directors constituted under the by-laws of the bank meets or holds its first meeting, the Board established under subsection 4(1) may continue to manage and administer the affairs of the bank on behalf of the said Board of Directors.

[27] In interpreting a statute, Lord Diplock in *Duport Steels Ltd & Ors v Sirs & Ors* [1986] 1 WLR 142 at p 157 held as follows:

> ... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our constitution, it is Parliament's opinion on these matters that is paramount.

His Lordship further held that:

> It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which

> experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest ...

In another decision in *Fothergill v Monarch Airlines Ltd* [1980] 3 WLR 209 at p 221, Lord Diplock said:

> The constitutional function performed by courts of justice as interpreters of the written law laid down in Acts of Parliament is often described as ascertaining 'the intention of Parliament'; but what this metaphor, though convenient, omits to take into account is that the court, when acting in its interpretative role, as well as when it is engaged in reviewing the legality of administrative action, is doing so as mediator between the state in the exercise of its legislative power and the private citizen for whom the law made by Parliament constitutes a rule binding upon him and enforceable by the executive power of the state. Elementary justice or, to use the concept often cited by the European court, the need for legal certainty demands that the rules by which the citizen is to be bound should be ascertainable by him (or more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible. The source to which Parliament must have intended the citizen to refer is the language of the Act itself. These are the words which Parliament has itself approved as accurately expressing its intentions. If the meaning of those words is clear and unambiguous and does not lead to a result that is manifestly absurd or unreasonable, it would be a confidence trick by Parliament and destructive of all legal certainty if the private citizen could not rely upon that meaning but was required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything to be found from which it could be inferred that Parliament's real intention had not been accurately expressed by the actual words that Parliament had adopted to communicate it to those affected by the legislation.

[28] Back to our jurisdiction, Federal Court in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 made following observation at pp 352:

> It is right to say at the risk of being trite, that in interpreting a statute, what the court is endeavouring to do is to give effect to the object and intent of Parliament in enacting that statute. In *Cheatley v R* (1972) 127 CLR 291, Barwick CJ said at p 296: 'In construing the section we are seeking Parliament's intention'. Similarly, in *A-G (Canada) v Hallet & Carey Ltd* [1952] AC 427, Lord Radcliffe said at p 449:
>
> > ... every statute is to be expounded according to its manifest or expressed intention.
>
> To whom can the judges turn for help in their task of determining Parliament's intention? The orthodox view is not Parliament or the draftsman; they have to discover that intention from the words that Parliament has used in the particular statute. This proposition has been well brought out by Lord Simon of Glaisdale in *Farrell v Alexander* [1977] AC 59 at p 81; [1976] 2 All ER 721 at p 733; [1976] 3 WLR 145 at p 158:
>
> > ... in the construction of all written instruments including statutes, what the court is concerned to ascertain is, not what the promulgators of the instruments

A meant to say, but the meaning of what they have said. It is in this sense that 'intention' is used as a term of art in the construction of documents.

In *Hatton v Beaumont* [1977] 2 NSWLR 211, the court had occasion to observe at p 225:

B The function of the court ... is to give effect to the intention of the Legislature. This it may do without difficulty where it appears from the terms of the legislation that the Legislature directed its attention to the question and expressed an intention upon the effect to be given to the particular provision. But in most cases ... such an intention is not expressed and the court's task is, by the application of the appropriate principles, to divine or impute that intention.

C It is a truism that Parliament does not always use plain words to express its intention and when this is the case so that the words used fail to convey the intention, courts may then have to resort to the device of ascertaining that intention by necessary implication from the words which Parliament has used. Courts are, however, slow to find an intention by mere implication (see *Young v Farrah & Nicholas Enterprises Pty Ltd* (1976) 13 SASR 444 at p 454 per Hogarth J).

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[29] Applying the above principle of law in interpreting s 31 of the Act 202, it is plain and obvious that the discretion was given to the second respondent with the concurrence of the Minister of Finance, to decide on the termination of the Act 202. The exercise of discretion can be done at any time if it appears to the second respondent that the enforcement of the Act 202 is no longer necessary. Under the law, only the second respondent with the concurrence of the Minister of Finance can determine the appropriate time to terminate the enforcement of the Act 202. From the unambiguous right given under sub-s 3(1) of the Act 202, second respondent rejected the applicants' application citing the following reason: 'Saya berpandangan dengan melihat kepada keadaan semasa, ini bukan masa yang sesuai untuk Bank Rakyat beroperasi dan ditadbir tanpa kawalan daripada Kementerian Pembangunan Usahawan bagi menjaga kepentingan Bank Rakyat secara keseluruhan' as clearly stated in the rejection letter.

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[30] From the given reason, it is comprehensible that the second respondent had purely made a policy decision in exercising his discretionary power. As a Minister that oversee the implementation and the enforcement of the Act 202, the second respondent had clearly indicated that it is not suitable to terminate the operation of the Act 202 under the current situation. It is trite that the courts normally do not meddle with the policy decision. Federal Court in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 at p 197 had this to say:

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Needless to say, if, as appears to be the case, this wider power is enjoyed by our courts, the decision whether to exercise it, and if so, in what manner, are matters which call for the utmost care and circumspection, strict regard being had to the

subject matter, the nature of the impugned decision and other relevant discretionary factors. A flexible test whose content will be governed by all the circumstances of the particular case will have to be applied.

For example, where policy considerations are involved in administrative decisions and courts do not possess knowledge of the policy considerations which underlie such decisions, courts ought not to review the reasoning of the administrative body, with a view to substituting their own opinion on the basis of what they consider to be fair and reasonable on the merits, for to do so would amount to a usurpation of power on the part of the courts.

In *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187 at p 188, His Lordship Raja Azlan Shah FJ (as His Highness then was) made the following observation:

The question whether the impugned Act is 'harsh and unjust' is a question of policy to be debated and decided by Parliament, and therefore not meant for judicial determination. To sustain it would cut very deeply into the very being of Parliament. Our courts ought not to enter this political thicket, even in such a worthwhile cause as the fundamental rights guaranteed by the Constitution, for as was said by Lord Macnaghten in *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at p 118:

> Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the legislature.

In a more recent decision, the Federal court in *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443; [2019] 4 CLJ 561 observed that:

[48] It is trite that not all cases brought before courts are reviewable. Before proceeding to hear a case, a court must first examine, inter alia, its justiciability. 'Justiciability' concerns the limits upon legal issues over which a court can exercise its judicial authority. Non-justiciability in its administrative law sense signifies that a matter is not capable of or susceptible to, judicial review, as well as non-justiciability in the sense of there being no jurisdiction to entertain an issue or to grant approved relief.

[49] The issue of justiciability in an application for leave for judicial review was considered in great detail by Mohamad Ariff Md Yusuf J (as he then was) *in Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra v Yang Maha Mulia Pemangku Raja Kelantan & Ors* [2011] 1 MLJ 128:

> Non-justiciable Issues

A In connection with the unconstitutionality of legislation, we have seen that even where a fundamental right has been invaded by a statute, the individual who is affected thereby may not have a remedy from a court of law, because the issue involved is not justiciable.

... The most prominent amongst non-justiciable issues are those which are B known in the USA as 'political questions', which means that the subject matter of the question is such that it is not capable of a judicial determination (at p 256).

The learned authors of *De Smith's Judicial Review* (6th Ed) have also appropriately observed in this connection that despite the wholesome development of administrative law, 'the fact remains, however, that there are C some issues which are inherently unsuited to adjudication' and in this category of case, 'the court acknowledges that the litigation process and the expertise of the Court are unsuited to resolving the question in hand' (at p 121).

A good definition of 'justiciability' can also be found in Chris Finn, *The Concept of 'Justiciability* in Administrative Law' in Groves & Lee, Australian D Administrative Law (2007):

> The term 'justiciability' refers to the suitability for, or amenability to, judicial review of a particular administrative decision or class of decisions. The term derives from the common law and reflects a series of self-imposed judicial restraints, themselves founded in a view as to the E appropriate constitutional balance between the respective roles of the Executive and the Judiciary. Thus, a matter may be deemed 'non-justiciable' by a court which feels that its resolution either is beyond the institutional competence of the Court or would involve stepping outside its appropriate constitutional role (at p 143).

F [50] There are certain areas which the court is reluctant to delve into. These include the power of the state to enter into treaties and conduct of foreign policy, the defence of the realm and the control of the armed forces, the prerogative of mercy, the dissolution of Parliament and the appointment of Ministers. Such powers are governed by broader policy considerations which are more appropriately entrusted G to the political branches of government, and which are unsuited to be examined by the courts. One such instance is the case of Council of *Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL) ('the *GCHQ* case').

[31] Based on those decided principles, we are in agreement with the LHCJ H view that the decision of the second respondent is non-justiciable and not amenable to judicial review.

CONCLUSION

[32] For the reasons stated above, we find that there is no merit in the applicants' appeal to warrant any interference from this court. Accordingly, we I are unanimous in dismissing this appeal with cost. The decision of the High Court is hereby affirmed. The applicants are ordered to pay costs of RM10,000 to the respondents subject to allocator.

Appeal dismissed with costs.

Reported by Nabilah Syahida Abdullah Salleh